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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,666	12/22/2003	Carroll Boyd Norris JR.	41687-P001C1	7599

7590 12/02/2004
Winstead Sechrest & Minick P.C.
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EXAMINER

TRAIL, ALLYSON NEEL

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 12/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,666

Applicant(s)

NORRIS, CARROLL BOYD

Examiner

Allyson N Trail

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-29 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-29 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/27/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Continuing Data

1. This application is continuation of U.S. Application No. 09/498,140, filed February 4, 2000, which is now U.S. patent 6,695,207.

Specification

2. The disclosure is objected to because of the following informalities:

Please include the heading "Cross Reference To Related Application". Under which, should including the following, "This application is a continuation of U.S. application Ser. No. 09/498,140, filed Feb. 4, 2000, now U.S. Pat. No. 6,695,207. The Cross Reference section should be placed before the "Background of the Invention" heading.

Appropriate correction is required.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-10 and 12-29 are rejected under the judicially created doctrine of

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obviousness-type double patenting as being unpatentable over claims 1-8 and 10-22 of U.S. Patent No. 6,695,207, hereinafter '207. Although the conflicting claims are not identical, they are not patentably distinct from each other. Both the current application and patent 6,695,207 claim the same subject matter including an apparatus for allowing only an authorized person to activate an instrumentality capable of performing action desired by a person who is the user of the apparatus. Both claim each of the many limitations included in the current application. Claim 1 of the current application includes limitations of claims 1 and 9 from '207. Claims 2 and 3 of the current application include limitations of claims 2 and 3 respectively from '207. The limitations of claims 4 and 10 of the current application are included in claim 1 of '207. Claims 5-9 of the current application include limitations of claims 4-8 respectively from '207. The limitations of claims 12 and 13 of the current application are included in claims 10 and 11 respectively from '207. Claim 14 of the current application includes limitations of claims 1, 10, and 12 from '207. Claims 15-18 of the current application include limitations of claim 13 from '207. Claim 19 of the current application is identical to claim 14 of '207. Claim 20 of the current application includes limitations of claims 1 and 15 from '207. Claims 21-26 of the current application include limitations of claims 15-21 respectively from '207. Claim 27 and 28 of the current application each include limitations of claims 1 and 22 from '207. Lastly, claim 29 of the current application includes limitations of claims 2 and 24 from '207.

The obviousness-type double patenting rejection is a judicially established doctrine, based upon public policy and is primarily intended to prevent prolongation of

the patent term by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.32(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. § 1.78(d).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Nichols et al (6,547,129), Huang et al (5,491,325), Nethery (6,070,798), Reber et al (2002/0129121), Thomson et al (5,121,945), Roberts (2003/0117635), and Thaxton (2003/0035539).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Allyson N. Trail* whose telephone number is (571) 272-2406. The examiner can normally be reached between the hours of 7:30AM to 4:00PM Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571) 272-2398. The fax phone number for this Group is (703) 872-9306.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [allyson.trail@uspto.gov].

All Internet e-mail communications will be made of record in the application file.

PTO employees do not engage in Internet communications where there exists a

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possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Allyson N. Trail
Patent Examiner
Art Unit 2876
November 29, 2004

Jared J. Fureman
JARED J. FUREMAN
PRIMARY EXAMINER